

2005 — 2006

**TOW SERVICE
AGREEMENT**

NOVEMBER 2004

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**STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
TOW SERVICE AGREEMENT
CHP 234 (11-2004) OPI 061**

This Tow Service Agreement (TSA) contains rules and regulations that a company agrees to comply with in order to receive a rotation tow listing with the California Highway Patrol (CHP). Participation in the CHP Rotation Tow Program is voluntary. Compliance with all of the terms and conditions of the TSA is mandatory for tow companies participating in the Rotation Tow Program. An operator, by agreeing to participate in the program, does not establish a contractual relationship with the CHP and is not acting as an agent for the CHP or the State of California when performing services under the TSA.

1. TOW DISTRICTS

- A. The CHP Area commander shall establish tow districts for each class of tow truck to facilitate the distribution of calls and meet the needs of the CHP with regards to response time and availability of tow services. Within each tow district, the Area commander shall determine the maximum response time, enrollment period, reasonable rates, minimum number of trucks, and any applicable waiver of requirements or addendum.
- B. Waiver of requirements shall be in effect no longer than six months following the application by, and acceptance of, an operator who meets all requirements of the TSA. A waiver will not be granted for requirements based upon law or safety considerations.
- C. Exceptions to compliance with the TSA shall not be authorized by verbal agreement. The exception shall be documented as an addendum or waiver to the TSA.

2. ROTATION LISTS

- A. Within each tow district, the CHP shall maintain separate rotation tow lists for each class of tow truck to ensure an equitable distribution of calls. Nothing in the TSA shall prohibit an Area commander or supervisor from requesting a specific tow company when, in the Area commander's or supervisor's opinion, the necessary resources to clear a hazard as expeditiously as possible are not available from the tow company currently at the top of the rotation tow list.

In such an instance, the tow company selected would be the next tow company on the list which has the qualifications (equipment, skills, timeliness, etc.) to provide the required service. After the request, the selected company would

then go to the bottom of the rotation tow. Tow companies on the same list that were by-passed would remain in the same order until their selection for a rotation tow for which they are qualified.

- B. Nothing shall prohibit a Class B, C, or D operator from maintaining a place on a lighter class rotation tow list, provided the tow truck meets the equipment specifications for that class of operation. Regardless of the class of tow truck utilized or responding to the call, charges shall not be more than for the class of vehicle towed or serviced, except when vehicle recovery operations require a larger class of tow truck.
- C. A call to an operator shall constitute one turn on the list and the operator shall be moved to the bottom of the list. This includes when the operator fails to answer the phone, is unable to respond, is unable to perform the required service, refuses to respond or provide service, or is canceled due to excessive response time. If it is determined that the operator is not needed and is canceled by the CHP, up to and including arrival at the scene and standby time which does not result in a tow, there shall be no charges and the operator will be placed back at the top of the list.
 - 1) If the operator is canceled by the vehicle's registered owner or agent prior to the operator taking possession of the vehicle, there shall be no charges for towing. The operator shall immediately contact the CHP and advise them of the cancellation. The operator will then be placed back at the top of the list.
 - 2) If service, other than towing, recovery, and load salvage, has begun and is canceled by the vehicle's registered owner or agent, the operator may charge one-half of the regular hourly service charge for the time expended on the call. For purposes of cancellation, service begins when physical work on the vehicle has begun, not the response. No lien shall arise for the service unless the operator has presented a written statement to the vehicle's registered owner or agent for the signed authorization of services to be performed. The operator shall not attempt to take possession of the vehicle in order to establish a lien for any non-towing services performed, or begun and subsequently canceled, when not entitled to such lien by law.
- D. Area commanders may establish local policy which allows an operator to dispatch more than one tow truck to a multiple vehicle collision scene in response to a rotation tow call.
- E. If two or more operators are called to the same incident, distribution of the vehicles shall be at the discretion of the CHP Incident Commander.

- F. An operator shall have a business office and storage facility located within the district he/she serves, unless this requirement is waived by an Area commander.
- 1) The Area commander may establish a maximum radius for the location of a business office from which an operator may provide service for a tow district.
 - 2) An operator shall provide service in only one Area command unless waived by both adjacent Area commanders, and with concurrence of the Division commander.
 - 3) A secondary storage facility does not qualify an operator for an additional tow district unless this requirement is excused by the Area commander based upon a specific need.
- G. Operators applying for a rotation tow listing shall have a minimum of three (3) verifiable years for-hire towing experience, as an owner or principal, prior to the final filing date of an enrollment period in order to qualify for a rotation tow listing.
- 1) Operators and owners who do not meet the three year verifiable for-hire towing experience may be considered for a position on the CHP rotation tow list if a full-time manager who possesses the required tow management experience is employed by the company. The manager shall have the authority to conduct all company business and to sign the TSA and the Application for Rotation Tow Listing (CHP 234A). If the manager ceases to be employed by the company, the TSA will be terminated until a new manager can be approved by the CHP. The CHP will evaluate the new manager's experience and require him/her to sign the TSA and CHP 234A for the company. An owner/operator who releases vehicles, completes lien sale paperwork, and other tow business related documents for three years in the company, with the qualified manager, will fulfill the three years for-hire-towing experience requirement.
 - 2) Ownership status will be investigated and determined by the CHP.
- H. Within each tow district, the CHP shall maintain separate rotation tow lists for salvage and recovery operations involving large commercial vehicles, as defined by the Area commander. Operators on the rotation salvage and recovery list shall respond at least one (1) driver that has five (5) verifiable years for-hire salvage and recovery experience. The operator shall have a minimum of one (1) Class D tow truck and one (1) Class C tow truck. When the operator is dispatched to salvage and recovery of a large commercial

vehicle, they shall respond with a minimum of two tow trucks. The two tow trucks responding shall include at minimum one (1) Class D and one (1) Class C tow truck.

Depending on area needs, the Area commander may establish local policy requiring a minimum of two (2) Class C tow trucks for the salvage and recovery rotation list. The operator assigned the initial call may, subject to prior agreement with the Area commander, request a specific operator for assistance to meet the two (2) Class C tow truck requirement.

3. TOW TRUCK CLASSIFICATIONS

- A. An operator shall equip and maintain tow trucks covered under the TSA in accordance with the provisions set forth in the California Vehicle Code (VC), Title 13 of the California Code of Regulations (Title 13), the specifications contained in this TSA, and in a manner consistent with industry standards and practices.
 - 1) All tow trucks shall have recovery capabilities, wheel lift capabilities, and a boom meeting the specifications contained in this TSA. Class D tow trucks used exclusively for salvage and recovery operations are not required to possess wheel lift capabilities.
 - 2) An operator who has a car carrier is exempted from the recovery, wheel lift, and boom capability requirements. However, the car carrier must be an additional unit and shall not be used for recovery.
- B. A violation of the Gross Vehicle Weight Rating (GVWR) and safe loading requirements of a tow truck may be cause for immediate suspension. This includes exceeding the tow truck's GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or not maintaining 50 percent of the tow truck's unladen front axle weight on the front axle when towing.
- C. There will be four classes of tow trucks covered under this TSA. The Area commander may require more than one tow truck in each class in tow districts where rapid response for congestion relief is required.
 - 1) **Class A - Light Duty**
 - a) An operator shall maintain a minimum of one tow truck which has a manufacturer's GVWR of at least 14,000 pounds. After June 30, 2006, Class A 4-wheel drive tow trucks with a GVWR less than 14,000 lbs may be listed as special equipment on the Rotation Tow Listing Application (CHP 234A). These tow trucks shall be used only for recoveries requiring the use of 4-wheel drive. All Class A

tow trucks and car carriers with a GVWR of less than 14,000 pounds currently approved for the CHP rotation tow list will be allowed to remain on the rotation tow list until June 30, 2006.

- b) The Area commander may require that an additional required tow truck be a car carrier.

2) **Class B - Medium Duty**

- a) An operator shall maintain a minimum of one tow truck with a GVWR of at least 26,001 pounds. The truck shall be equipped with air brakes and a tractor protection valve or device, and be capable of providing and maintaining continuous air to the towed vehicle. All Class B tow trucks with a GVWR of less than 26,001 pounds currently approved for the CHP Class B rotation tow list will be allowed to remain on the Class B rotation tow list until June 30, 2010.
- b) Tow companies continuously used on rotation for the CHP, whose equipment was previously approved and owned by the same operator but lacks air brakes, and/or a tractor protection valve or device, may apply for and receive a Class B rotation tow listing if the tow truck is capable of supplying continuous air to the towed vehicle from its engine mounted air compressor and is equipped with an air gauge.

3) **Class C - Heavy Duty**

- a) An operator shall maintain at least one three-axle tow truck with a GVWR of at least 33,001 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.

4) **Class D - Super Heavy Duty**

- a) An operator shall maintain at least one three-axle tow truck with a GVWR of at least 50,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.
- b) If this class of tow truck is used exclusively for salvage and recovery operations, there is no requirement for providing and maintaining continuous air to the towed vehicle.

- D. To properly and safely tow and service the wide variety of vehicles being operated on the highway, a towing procedure may require the use of auxiliary equipment specifically designed for the purpose. This auxiliary equipment should be used when appropriate.

4. GENERAL EQUIPMENT SPECIFICATIONS

- A. Tow Truck and Car Carrier Classifications: Tow truck and car carrier classifications are based on the truck chassis GVWR and the classification system used by the American Trucking Association (ATA) and truck manufacturers.
- B. Towing Limitations:
 - 1) The total weight of the truck, including the lifted load, shall fall within the GVWR and not exceed either the Front Axle Weight Ratings (FAWR) or Rear Axle Weight Ratings (RAWR).
 - 2) All tow trucks and car carriers shall be equipped and in compliance with the most recent electronic version of the Tow Truck Inspection Guide (CHP 234B).
 - 3) The truck must meet all applicable state and/or federal standards.
- C. Identification Labels: Each piece of towing equipment shall have a label or identification tag permanently affixed to the equipment in a prominent location to identify the manufacturer, serial number, model, and rated capacity.
- D. Recovery Equipment Rating: The basic performance rating of the recovery equipment is the weight the equipment can lift in a winching mode, when the boom is static at a 30 degree elevation with the load lines vertical and the lifting cables sharing the load equally, measured with a live load (weight or load cell).
 - 1) The structural design of the recovery equipment must have a higher load capacity than the performance ratings.
 - 2) Winches shall conform to or exceed the specifications set forth by the Recovery Equipment Rating (SAE) Handbook, SAE J706.
 - 3) All ratings for cable and chain assemblies are for the undamaged assembly condition. All cable and chain assemblies should be the same type, construction, and rating as specified by the original equipment manufacturer (OEM) for the equipment.

- E. Control/Safety Labels: All controls shall be clearly marked to indicate proper operation, as well as any special warnings or cautions.
- F. Uniforms: CHP rotation tow drivers shall wear an identifiable uniform shirt displaying the company and driver's names while engaged in CHP rotation tow operations.
- G. Safety Vests: CHP rotation tow drivers shall wear a safety vest or reflectorizing clothing, meeting Occupational Safety and Health Administration (OSHA) requirements.

5. TOW TRUCK DRIVERS

- A. The operator shall ensure that tow truck drivers responding to calls initiated by the CHP are qualified and competent employees of the operator's company. The operator shall ensure that the tow truck drivers are trained and proficient in the use of the tow truck and related equipment, including, but not limited to, the procedures necessary for the safe towing and/or recovery of the various types of vehicles serviced through CHP rotation. Tow drivers shall perform all towing and recovery operations in the safest and most expedient manner possible. Tow truck drivers shall be at least 18 years of age and shall possess the proper class license and endorsements for the towed and towing vehicle.
- B. The operator shall maintain a current list of drivers.
 - 1) The operator shall provide a current list of drivers to the Area upon implementation of this TSA. The operator shall notify the Area upon any change in driver status, including the addition of any new drivers, or the deletion of any drivers.
 - 2) All drivers are required to complete and sign the Tow Operator/Driver Information Sheet (CHP 234F).
- C. All tow truck drivers and owner/operators shall be enrolled in the Pull Notice Program.
 - 1) Upon the addition of new drivers, an operator will be granted a maximum of 30 days to enroll drivers in the Pull Notice Program.
 - 2) Pull Notices shall be kept on file, signed, and dated by the operator.
 - 3) Area commanders may require an operator to provide copies of Pull Notice Reports to the Area.

6. RATES

- A. Fees charged for calls originating from the CHP shall be reasonable and not in excess of those rates charged for similar services provided in response to requests initiated by any other public agency or private person. The reasonableness of the fees charged will be determined in the following manner:
- 1) The operator shall submit two retail hourly rates to the Area commander. One rate for normal business hours and one rate for after business hours. The Area commander shall determine the validity and reasonableness of the submitted rates.
 - a) Validity will be based upon factors such as: telephone quotes, posted rates, charges to retail customers, etc. Any submitted rate in excess of an operator's usual customary retail rate quoted over the phone and posted in the company office will be considered invalid and will not be accepted.
 - b) Reasonableness shall be determined as compared to other rates. An operator who submits a rate that is determined to be excessive shall be allowed to resubmit rates only once.
 - 2) In an effort to remain competitive in the open market, the operator may lower retail rates at any time by notifying the CHP. When an operator lowers the retail rate, that retail rate becomes the new approved rate. Operators may only raise rates during enrollment periods or upon approval after a midterm review.
 - 3) Any operator who charges rates above the submitted rates for a CHP call shall be in violation of the TSA and subject to disciplinary action.
- B. The rate for towing shall be computed from portal to portal. Time expended shall be charged at a rate not to exceed the hourly rate. Time expended in excess of the minimums shall also be at the hourly rate in no more than one-minute increments. There shall be no additional charges for mileage, labor, etc.
- 1) The operator may charge up to a thirty-minute minimum per call for any service or tow which is performed when the vehicle operator or agent is present and the vehicle is not stored at the direction of an officer.
 - 2) The operator may charge up to a one-hour minimum per call on responses which result in storage of a vehicle at the direction of an officer.

- 3) The operator shall base towing charges upon the class of vehicle being towed, regardless of the class of truck used, except when vehicle recovery operations require a larger class truck.
- C. Rates for a service call (out of gas, lockouts, tire changes, etc.) shall be from portal to end of service, and may be at the hourly rate with a thirty-minute minimum. Charges in excess of thirty minutes may be charged in no more than one-minute increments.
- D. **Fees for Special Operations**
- 1) For special operations involving Class B, C, and D tow trucks, the operator shall submit the proposed fees for vehicle recovery operations and load salvage operations to the Area commander. Fees shall be reasonable and consistent with industry standards for similar operations. Charges in excess of thirty minutes may be charged in no more than one-minute increments.
 - a) Hourly rates shall be established for the following:
 - (1) Auxiliary and contracted equipment, e.g., airbags, converter gear/dolly, additional trailers, fork lift, front loaders, etc.
 - (2) Contract labor.
 - b) Based upon the average of the proposed fees submitted and a comparison to industry standards for similar operations, the Area commander shall determine the reasonableness of the fees for these types of operations.
 - 2) Operators shall submit a mark-up rate (percentage of the cost to the operator) for rental equipment and specialized labor not otherwise listed on the application.
 - 3) If an operator performs a service for which a required rate was not submitted and approved by the Area, the operator shall only be entitled to charge for the actual cost of that service plus 10 percent.
- E. The charge for after-hours release shall be no more than one-half the hourly rate, and shall only be allowed on weekends, holidays, and outside normal business hours.

F. Storage Fees

- 1) The operator shall submit proposed storage fees for inside and outside storage to the Area commander. Based upon the average of the proposed fees submitted by those applying for rotation, the Area commander shall determine the validity and reasonableness of the fees for inside and outside storage. Fees for inside storage shall be charged only when inside storage is requested by the CHP, registered owner, legal owner, insurance company, or when the inside storage can be justified by the tow operator.
 - 2) The operator shall display in plain view at all cashiers stations, a sign as described in Section 3070 of the Civil Code, disclosing all storage fees and charges in force, including the maximum storage rate.
 - 3) Vehicles stored 24 hours or less shall be charged no more than one day storage.
 - 4) Storage of vehicles in combination may be charged a per vehicle rate except for dollies, con-gear, etc. Dollies and con-gear may be charged a storage rate not to exceed Class A storage fees.
- G. The approved schedule of rates charged by the operator shall be available in the tow truck, and shall be presented upon demand to the persons for whom the tow services were provided, their agent, or any CHP officer at the scene.
- H. Rate requirements represent the maximum an operator may charge on a CHP call. An operator is not precluded from charging less when deemed appropriate by the operator. These requirements shall not be construed as requiring a charge if an operator would not normally charge for such service.
- I. No operator or employee shall refer to any rate as required or set by the CHP.

7. COLLUSION

- A. An operator and/or applicant shall not conspire, attempt to conspire, or commit any other act of collusion with any other operator or applicant for the purpose of secretly, or otherwise, establishing an understanding regarding rates or conditions to the TSA that would bring about any unfair condition which could be prejudicial to the CHP, the motoring public, or other operators.
- B. A finding by the CHP that any operator or applicant has been involved in collusion shall be cause for denial of an application or shall nullify the TSA. Any operator or applicant found to be involved in any act, or attempted act of collusion, shall be disqualified from participation on all CHP rotation tow lists for the current term, plus three years.

8. RESPONSE TO CALLS

- A. The operator shall respond to calls 24 hours a day, seven days a week, within the maximum response time limits as established by the Area commander and as specified in Element 1, Tow Districts, of this TSA. The operator shall respond with a tow truck of the class required to tow the vehicle specified by the CHP. The operator shall advise CHP dispatch, at the time of notification, if they are either unable to respond or unable to meet the maximum response time. If, after accepting the call, the operator is unable to respond or will be delayed in responding, the operator shall immediately notify the appropriate CHP Communications Center. The operator shall not assign any calls to other tow operators.
- 1) A failure to respond to perform the required towing or service and/or repeated failures to meet the maximum response time requirements shall constitute failure to comply with the terms and conditions of this TSA.
 - 2) The Area commander may take immediate disciplinary action for any violation of the requirement to respond within the maximum response time.
 - 3) When an operator will be temporarily unavailable to provide services due to a pre-planned or scheduled activity, the operator shall notify the Area command at least 24 hours prior to the date that services will be unavailable, noting the times and dates of the unavailability.
- B. The tow operator, or operator's employees responding to a call, shall perform the towing or service required for which they were called unless the requested equipment is inadequate for the service to be performed.
- C. Only the tow truck personnel and equipment requested shall respond to a CHP call. An operator shall not respond to a CHP call assigned to another operator unless requested to do so by the CHP.
- 1) This shall not preclude the operator from responding to an incident to ascertain if additional assistance or equipment is required. There shall be no additional charge for any personnel or equipment that is not necessary to perform the required service.
 - 2) There may be times when the operator assigned the initial call may require the assistance of an additional operator at the scene. The operator assigned the initial call may, subject to prior agreement with the Area commander and with the concurrence of the Incident Commander, request

a specific operator for assistance. The request shall be routed to the additional operator through the CHP.

- 3) There may be times when an operator, who was not called to a scene, comes upon a collision scene where a vehicle or vehicles are blocking a roadway and an officer requests assistance in clearing the roadway. In such a case, the operator may be requested to move the vehicle to a safe location, as directed by the officer, and leave it. There shall be no charge for this assistance and the assistance provided shall not change the operator's place in the rotation.

9. STORAGE FACILITY

- A. The operator shall be responsible for the security of vehicles and property at the place of storage. At a minimum, a fenced or enclosed area shall be provided. The operator is responsible for the reasonable care, custody, and control of any property contained in towed or stored vehicles.
- B. The operator shall obtain approval from the CHP prior to the removal of any property from a stored or impounded vehicle and shall provide a receipt, with a copy placed in the stored vehicle. The requirement to obtain approval from the CHP prior to the removal of property may be excused by the Area commander if it is determined that proper safeguards and procedures are utilized by the operator.
 - 1) This requirement may not be waived in cases where a vehicle has been impounded for evidence or investigation.
 - 2) Upon approval from the CHP, the operator shall release personal property from an impounded vehicle at the request of the vehicle registered owner or agent.
 - a) There shall be no charge for the release of personal property during normal business hours. Operators may charge an after hours release fee for property released after normal business hours, consistent with the after-hours vehicle release provisions.
 - b) Personal property is considered to be items which are not affixed to the vehicle. Personal property from a stored vehicle shall be released upon request of the vehicle registered owner or agent. Responses are mandatory on weekends, holidays, and outside normal business hours, provided the vehicle's current registered owner or owner's authorized agent are available for return of personal property. Payment for an after-hours release of property may be required at the time of the release.

- 3) Cargo shall be released upon demand of the carrier or pursuant to a court order.
- C. The primary storage facility shall normally be at the same location as the business address. If not at the same location, there shall be no charge for any additional distance traveled to and from a secondary location. The vehicle and/or personal property shall be released at the primary storage facility or place of business upon request of the registered owner or a person having a legal entitlement to the vehicle and/or property.
- 1) Prior to the utilization of new storage facilities that were not listed on the application for rotation tow listing, the operator shall furnish the address and obtain the Area commander's approval.
 - 2) Secondary storage facilities shall be located reasonably close to the main business office.
- D. Tow operators shall maintain sufficient storage spaces.
- E. An operator's place of business shall have a sign that clearly identifies it to the public as a towing service. The sign shall have letters that are clearly visible to the public from the street. The sign shall be visible at night.
- F. For the purpose of the TSA, "normal business hours" shall not be less than 8 a.m. to 5 p.m., Monday through Friday, except for the following state recognized holidays: New Year's Day, Martin Luther King Day, Lincoln's Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Cesar Chavez Day, Thanksgiving Day, day after Thanksgiving Day, and Christmas Day.
- G. Business hours shall be posted in plain view to the public. Offices staffed with only one employee may be closed for one hour at lunch. A sign shall be posted with the reason for closure. The sign shall have a phone number where a request will result in an immediate response to release property or vehicles. Response to the office shall be within the time frame required for a normal CHP Class A tow.
- H. Employees shall be properly trained to conduct business transactions related to towing, storage, and release of vehicles/property.
- I. The release of vehicles shall be conducted in accordance with Area procedures. The Area commander shall ensure that proper provisions are in place for the release of all impounded vehicles. Tow companies shall respond for after-hours release of vehicles when requested by the current registered owner or owner's authorized agent.

10. INSURANCE

- A. The operator shall maintain the following minimum levels of insurance from an insurance carrier admitted in California, or admitted in the state in which the operator's business is located, and is authorized to do business in California:
- 1) Minimum Level of Financial Responsibility (as required by Section 34631.5 of the California Vehicle Code) - Bodily injury and property damage with a combined single limit of not less than \$750,000 for Class A tow trucks. The combined limits for Classes B, C, and D shall not be less than \$1,000,000. These minimum standards are to include non-owned and hired auto coverage.
 - 2) Uninsured Motorist - Legal minimum, combined single limit.
 - 3) On-Hook Coverage/Cargo - Insuring the vehicle in tow with limits based on the size of the tow truck.
 - a) Class A tow truck.....\$50,000
 - b) Class B tow truck.....\$100,000
 - c) Class C tow truck.....\$200,000
 - d) Class D tow truck.....\$250,000
 - 4) Garage Liability/Garage Keeper's liability - Includes premises and operations. Coverage for bodily injury and property damage with a combined single limit of not less than \$500,000.
- B. Proof of insurance shall be in the form of a certificate of insurance. Policy expiration or cancellation will immediately nullify the TSA. The operator's insurance policy shall provide for not less than 30 days written notice to the CHP in the event the insurance policy is canceled or is due to expire.

11. INSPECTIONS

The CHP shall provide for not less than one annual inspection of all tow trucks at no charge to the operator. The CHP may conduct additional inspections without notice during normal business hours. The operator shall not dispatch a tow truck that has not been inspected and approved by the CHP. The CHP shall inspect a tow truck within thirty days of a request from an operator. Any operator who fails an inspection is entitled to only one re-inspection. Failure to pass the re-inspection shall be cause for the disqualification of the tow truck from use on CHP rotation. The tow truck shall be disqualified until the next enrollment period.

12. BUSINESS RECORDS

- A. The operator shall maintain records of all tow services furnished. The records will be maintained at the operator's place of business. Invoices shall at a minimum include a description of each vehicle, nature of service, start time, end time, location of call, itemized costs of towing and storage, the tow truck driver's name, and truck used.
- B. At the operators primary office, they shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, Federal Communication Commission licensing, and non-CHP tows.
- C. The CHP may inspect all operator records without notice during normal business hours.
- D. Operators shall permit the CHP to make copies of business records at their place of business, or to remove business records for the purpose of reproduction. The CHP shall provide a receipt for any (original) records removed from the place of business.
- E. Records shall be maintained and available for inspection for a period of two years plus the current term of this TSA.
- F. Failure of the operator to comply with the inspection requirements shall be cause for suspension.

13. FINANCIAL INTEREST

- A. No operator or applicant shall be directly involved in the towing-related business of any other operator or applicant within the same tow district.
- B. Storage facilities owned by an operator, and shared with another operator, shall only be approved if the owner/operator charges for the space exclusively on a flat monthly rate rather than a vehicle-by-vehicle basis, or combination thereof. Facilities shared by operators shall be physically separated and secured from each other. Area commanders may delete this requirement if deemed appropriate.
- C. The sale or transfer of the controlling interest in a company shall immediately terminate the TSA. A new owner may apply for a rotation tow listing at any time during the remainder of the current TSA term, regardless of the Area's enrollment period.
- D. A terminated or suspended operator, and/or the tow business owner at the time of the suspension or termination, shall not be eligible for a rotation listing for the

duration of the suspension or termination. This provision applies to the operator working in any capacity within any tow business or operating any tow business, and to the tow business, even if operated under new ownership.

14. ANNUAL MEETINGS

The Area commander shall conduct, at a minimum, one annual meeting to discuss issues concerning the tow rotation. All meetings shall be mandatory for the operator or operator's designee wishing to remain on rotation. The CHP shall give the operator 30 days written notice of these meetings.

15. DEMEANOR AND CONDUCT

- A. While involved in CHP rotation tow operations or related business, the tow operator and/or employees shall refrain from any acts of misconduct including, but not limited to, any of the following:
 - 1) Rude or discourteous behavior.
 - 2) Lack of service, selective service, or refusal to provide service which the operator is/should be capable of performing.
 - 3) Any act of sexual harassment or sexual impropriety.
 - 4) Unsafe driving practices.
 - 5) Exhibiting any objective symptoms of alcohol and/or drug use.
 - 6) Appearing at the scene of a CHP rotation tow call with the odor of an alcoholic beverage emitting from the driver's or employee's breath. The operator/tow truck driver shall submit to a preliminary alcohol screening test upon demand of the CHP.
- B. All CHP-related tow service complaints received by the CHP against a tow operator or tow operator's employees will be accepted and investigated in a fair and impartial manner. The operator will be notified of the results of any investigation.
- C. Should the filing of criminal charges be a possibility, the CHP will conduct the investigation to conclusion or assist the lead investigating agency and, if warranted, request prosecution.

16. COMPLIANCE WITH LAW

- A. The tow operator and employees shall, at all times, comply with federal, state, and local laws and ordinances.
 - 1) In the event of a minor traffic violation by a rotation tow truck driver which is known by the CHP, the tow operator shall be advised of the violation by the CHP. The tow operator will be granted the opportunity to take necessary steps to ensure that the driver complies with the law. Any subsequent traffic violations may be cause for disciplinary action against the operator and/or the involved employees.
 - 2) Any flagrant traffic violation may be cause for immediate disciplinary action against the operator and/or the involved employees.
- B. The provisions contained in Element 16, Compliance with Law, do not preclude the CHP from taking appropriate enforcement or administrative action for any violations of law. Complaints for violations of the law not normally investigated by CHP will be referred to the agency with investigation jurisdiction.
- C. Any conviction of the operator or employee involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a drug-related offense, felony driving while under the influence of alcohol and/or a drug, misdemeanor driving while under the influence of alcohol and/or a drug, or moral turpitude while involved in a CHP rotation tow call shall be cause for removal of the employee from the list of current CHP rotation tow truck drivers, denial of operator application, or termination of the TSA.
- D. An operator or employee arrested/charged for a violation involving any of the above crimes may be suspended until the case is adjudicated.

17. COMPLIANCE WITH THE TSA

- A. The operator agrees, as a condition of inclusion on the rotation tow list, to comply with the terms and conditions of the TSA. Furthermore, the operator agrees that failure by the operator or the operator's agent to comply with these terms and conditions shall be cause for written reprimand, suspension, or termination from the CHP rotation tow lists.
- B. Alleged violations of the TSA will be investigated by the CHP Area covered by the TSA. The operator will be notified of the CHP Area's findings within 30 calendar days of the conclusion of the investigation.

18. DISCIPLINARY ACTION

- A. The Area commander shall take disciplinary action against operators for violations investigated and confirmed or sustained. Unless otherwise noted, the Area commander shall determine the period of suspension. The Area commander shall retain discretion regarding the length of any suspension imposed pursuant to the terms and conditions of this TSA.
- B. Records of violations shall be retained by the CHP for at least 36 months.
- C. Disciplinary action taken against an operator by an Area commander should be honored by all CHP Areas being serviced by the operator in question.
- D. A violation of the equipment requirements related to safety shall be cause for immediate suspension. The suspension will remain in effect until the period of suspension is completed and the CHP has conducted an inspection and concluded the operator is in compliance.
- E. A violation of the GVWR and safe loading requirements of a tow truck may be cause for immediate suspension. This includes exceeding the tow truck's GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or not maintaining 50 percent of the tow truck's unladen front axle weight on the front axle when in tow.
- F. A violation of intentionally overcharging or a pattern of overcharging shall be cause for suspension. The suspension will remain in effect until the period of suspension is completed and the operator has presented proof to the CHP that reimbursement has been made to the aggrieved customer.
- G. CHP personnel shall not be offered gratuities and requests for gratuities shall not be honored by tow company operators, employees, or associates of the company. A violation of this section shall be cause for suspension or termination.
- H. Any unsatisfactory rating based upon any safety violation of the Biennial Inspection of Terminals (BIT) Program shall be cause for suspension. The suspension will remain in effect until the period of suspension is completed and the operator has presented proof of compliance with the BIT requirements. Any unsatisfactory rating may be cause for suspension. Failure of the operator to satisfy a court order mandating reimbursement to the vehicle or property owner for the damage or loss which occurred while the vehicle was in the operator's custody will result in a suspension. The suspension will remain in effect until the period of suspension is completed and the operator has presented proof of the reimbursement.

- I. Failure of the operator to comply with the inspection requirements of this TSA will result in a suspension. The suspension will remain in effect until the period of suspension is completed and the operator has complied with the inspection requirement.
- J. Failure of the operators to send tow truck drivers on CHP calls who are qualified and competent employees shall be cause for suspension. The suspension will remain in effect until the period of suspension is completed and the operator has presented proof to the CHP that the driver is qualified and competent.
- K. Failure of the operator to maintain the minimum insurance requirements set forth in the TSA will immediately nullify the TSA. The operator will be subject to an additional suspension for failure to notify the CHP in advance of the insurance policy expiration or cancellation.
- L. Failure of the operator or employee to comply with Element 14, Demeanor and Conduct, and/or Element 15, Compliance with Law, may be cause for suspension if deemed appropriate by the Area commander.
- M. If the operator is serving a suspension for one year or more, the operator shall be required to comply with all terms and conditions of the current TSA at the time of the reinstatement. There will be no approval of equipment that is not in compliance with the equipment specifications contained in the TSA at the time of reinstatement.

19. TERMS OF DISCIPLINARY ACTION

- A. Except as specifically stated in the TSA, minor violations of the terms and conditions of the TSA may be cause for disciplinary action in the following manner:
 - 1. First violation within a 12 month period – letter of written reprimand.
 - 2. Second violation within a 12 month period – 1 to 30-day suspension.
 - 3. Third violation within a 12 month period – 60 to 90-day suspension.
 - 4. Fourth violation within a 12 month period – termination of the TSA.

Note: In lieu of termination, the CHP may impose additional suspensions for longer periods, if deemed appropriate.

- B. Violations of the terms and conditions of the TSA that are subject to suspension for the first violation are categorized as major violations. Any subsequent or continuing major violation may be cause for termination.
 - 1. When considering punitive action for a major violation of the TSA, an Area commander may take into consideration all major and minor violations that occurred within 36 months prior to the date of the current violation.
 - 2. Termination shall be invoked if, in the CHP's judgment, continued participation in the Rotation Tow Program by the affected tow operator may result in a hazard to public safety and/or welfare, or the operator has been convicted of a crime listed in Element 15C.
- C. Nothing herein shall be deemed to prohibit the CHP from immediately suspending any operator or employee whose conduct, in the opinion of the Area commander, is deemed to be a danger to the motoring public or who has engaged in conduct constituting a flagrant violation of the TSA.

20. HEARING/APPEAL

- A. In the event the CHP serves the operator with disciplinary action, the operator may request a hearing within seven calendar days by submitting a request in writing to the Area commander. If a hearing is requested, it shall be held as soon as practicable. The hearing shall be conducted by the Area commander or designee, and the operator shall be entitled to present all relevant facts and circumstances in support of the operator's position. The operator shall be further entitled to present testimony of at least one qualified person. The operator shall be notified in writing of the Area commander's decision(s) within ten business days of the date of completion of the hearing.
- B. Following a hearing, if the operator is dissatisfied with the Area commander's decision(s), the operator may appeal by submitting a request in writing to the CHP Division commander within seven calendar days. If an appeal is requested, it shall be held as soon as practicable. The appeal shall be conducted by the Division commander or designee. The operator shall have the same rights as those provided at the Area level. The operator shall be notified in writing of the decision(s) of the Division commander within ten business days of the date of the appeal. The Division commander's decision(s) shall be subject to no further administrative appeal.
- C. A suspension shall not take effect until the hearing and appeal process has been exhausted, with the exception of operators whose conduct is deemed to be a

danger to the motoring public or who continue to violate the terms and conditions of this TSA. If an operator fails to request a hearing or appeal within the specified time or fails to appear at a scheduled hearing or appeal, the action taken by the CHP Area commander shall be final and the suspension shall take effect upon written notification to the operator by the Area commander.

21. MIDTERM REVIEW

- A. The purpose of this section is to provide a process for a midterm review of the terms and conditions of the TSA in the event that there is a legitimate and substantial change in conditions or law affecting the majority of the operators within an Area or the CHP.
- B. A midterm review, when granted by the Commissioner or designee, will not automatically authorize a change in the terms and conditions of the TSA. If a midterm review is announced by the Commissioner or designee, it is the responsibility of the affected Area commander to conduct a review of the conditions which initially caused the request to be communicated and to determine if the change is justified.

22. ADVERTISING

The operator shall not display any sign or engage in any advertisement indicating an official or unofficial connection with the CHP or the Department of Motor Vehicles.

23. CANCELLATION

This TSA may be canceled by either party by giving written notice to the other party.

24. OPERATOR APPROVAL

I certify that all drivers operating under this Tow Service Agreement (TSA) are qualified and competent. I further certify that I have read and understand this TSA and agree to abide by all the provisions. I further agree to indemnify, defend, and save harmless the state, its officers, agents, and employees from any and all claims and losses accruing or resulting to the operator in connection with the performance of the TSA, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the operator in the performance of this TSA. The operator, and the agents and employees of the operator, in the performance of this TSA, shall act in an independent capacity and not as officers or employees or agents of the State of California. The terms of this TSA (2005-2006 TSA) will become effective:

_____ and end _____.
Date Date

Operator Approval		
Signature	Typed Name	
Company	Title	Date
Business Address		Phone Number